



Archived at the Flinders Academic Commons:
<http://hdl.handle.net/2328/27231>

This is a scan of a document number DUN/Speeches/0552
in the Dunstan Collection, Special Collections, Flinders University Library.
<http://www.flinders.edu.au/library/info/collections/special/dunstan/>

Title:

Article for Peter Ward

Please acknowledge the source as:
Dunstan Collection, Flinders University Library.
Identifier: DUN/Speeches/0552

© Copyright Estate Donald Allan Dunstan

By DON DUNSTAN.

The headline-making of the Commonwealth Parliament often comes from issues which only remotely affect the everyday lives of citizens. Decisions made by the State Parliaments about matters which affect every citizen often receive little attention. Everyone in the community is affected by the laws and practice on sale of goods and advertising and sales techniques and everyone engaged in business and commerce is affected by the provisions of the Companies Acts. Endeavours to protect the citizen in the community by legislation at the State level, so far have been largely ineffective. A citizen may be persuaded by modern sales techniques to purchase goods of little value which he does not want. He may be subjected to all the gimmicks of bait advertising. He may have his wife persuaded into purchase of encyclopaedia or expensive kitchenware by door to door salesmen carefully trained to prey on the buyers' weaknesses. He may be attracted into share transactions in companies with inadequate capital and about which there is no effective public control. Attempts have been made to provide some remedies in these fields. The Standing Committee of Attorneys-General of the States and the Commonwealth prepared and got passed the Uniform Companies Act and the Uniform Hire Purchase Agreements Act. Neither of these, however, provides adequate protection to the purchaser or shareholder and their very grave limitations have become painfully obvious.

Those who make money from sharp practices combine with those, who, while not engaging in sharp practices themselves nevertheless are suspicious of added limitations on their activities or added burdens or responsibilities, to defeat proposals to get adequate protection legislation covering the sale of goods and commercial transactions on the Statute Books. In the last issue of "A.B.R." it was pointed out that vested interests were using their influence politically to prevent the adoption of the Adelaide Law School Report proposals on consumer credit legislation. It is not widely known that following on the failure of large companies in 1965-66, the Attorneys-General had before them proposals which they had supported in principle, placing very much greater responsibility upon company officers for the failure of their companies and rendering them personally liable in the case of negligence. Moreover, there were also proposals for tightening the auditors' provisions so that the auditors would be effectively independent and would give critical and objective reports rather than (as in many cases at present) gilding the lily somewhat in order to ensure their reappointment as auditors. These proposals would have meant real additional protection to company investors, but when the Chamber of Manufactures and Chamber of Commerce learnt of them, there were immediate political pressures brought to bear to see that they were dropped.

Another technique used by those who would evade consumer protection legislation is to play off differences in legislation between the States and to operate on an interstate basis. For instance, in South Australia there

is no legislation dealing with door to door sales generally, but there is a restrictive provision on door to door sales of books. Interstate operators selling goods other than books are able to operate quite freely in South Australia, but the booksellers have also found means of operating to defeat this State legislation. They tender to the buyer a contract for the purchase of books which contains a clause that the contract is subject to the law of the other State from which the company is operating. They make their sales and then take the salesmen back across the border before South Australian authorities can catch up with them. The contract is then disputed by the purchaser and they sue the purchaser in the State from which they are operating. This makes it very expensive for the purchaser to defend. When they have obtained a judgement in their own State, they then register the judgement in South Australia and despite the fact that the transaction was contrary to the law of South Australia under the Commonwealth Service and Execution of Process Act, the South Australian courts must enforce the judgement obtained interstate.

There is no end to the devious machinations of those who would make a swift buck at the expense of the average citizen. Unfortunately the average citizen does not know what needs to be done to protect him but only finds from time to time that he is unprotected and harmed.

One of the most important fields of action for State Parliament in Australia today is to get uniform legislation to protect company investors, purchasers of goods, purchasers on credit and to prohibit misleading advertising and unfair sales techniques. Hand in hand with the uniform legislation must go joint administrative provisions to ensure that the protection legislation is

enforced. To expect the average citizen to protect himself against considerable commercial interests merely by an action at law is to ignore the facts of life. The first real essay at effective action in this field, the Adelaide Law School Report, is already in grave danger of being shelved, and unless those with the interests of consumers and investors at heart are prepared to carry out a massive and concerted campaign, the exploiters throughout Australia will continue to find a happy hunting ground throughout the Commonwealth.
